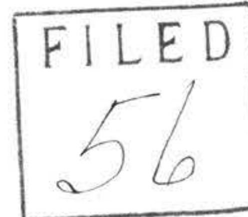
BEER BILL: A permit issued to a wholesaler permits said wholesaler to distribute from any part of the state and from as many places in the state as he so desires; provided, however, that his business is conducted from several places in good faith and not to evade the permit tax provided in House Bill No. 23.

June 22, 1933.

13139E Laws 33 7-4



Hon. Charles H. Manville,
Food & Drug Commissioner,
Jefferson City, Missouri.

Dear Sir:

We have received your request for an opinion, which is as follows:

> "The Polar Ice & Supply Co., Joplin, Missouri, intends to warehouse a car of beer at Carthage, Missouri, and another at Neosho; another one of our customers operates warehouses at Old Monroe and St. Charles. The question arises if they need the wholesale distributors permit for each warehouse or if one permit issued to the company permits it to operate at the several points."

It is the opinion of this department that the permit referred to in subsection "b" of Sec. 13139e of House Bill No. 23 is sufficient to permit any wholesaler or distributor holding such permit to wholesale or distribute beer for resale to retailers only in any part of the State of Missouri, and that such wholesalers or distributors do not have to secure a permit for each warehouse or place of business that such wholesaler or distributor operates; provided, however, that if a wholesaler or distributor operates two or more places of business, it must be a bona fide operation on the part of such wholesaler or distributor and not a subterfuge in order that two or more wholesalers may escape the permit fee or charge made in the Act.

Subsection "b" of Sec. 13139e is as follows:

> "For a permit authorizing the sale in this state by any distributor or wholesaler, other than the manufacturer or brewer thereof, of intoxicating beer, ($50.00) fifty dollars."

Your question is whether or not the above section authorizes the collection on your part of a $50.00 fee from one wholesaler for each wholesale establishment or distributing point that such wholesaler maintains. We find nothing in the above quoted part of the statute that would warrant any such assumption--in fact, it would seem clear from the language above quoted that the distributor or wholesaler is authorized to distribute or wholesale beer by the issuance of said permit to any part of the State of Missouri, and from any point therein. If we construed this Act otherwise, we would be reading something into the statute that is not there.

House Bill No. 23 in so far as the sale of permits or licenses is concerned, is a revenue statute providing for a privilege tax with a penalty therefor if said privilege tax is not paid. Under such statute it is the duty of one construing its provisions to construe same strictly, and where there is doubt, to resolve the doubt in favor of the taxpayer or licensee.

In Cooley on Taxation, Volume II, page 1114, it is said:

> '"The question regarding the revenue laws has generally been whether or not they should be construed strictly. To express it in somewhat different language, the question is whether, when a question of doubt arises in the application of a statute to its subject-matter or supposed subject-matter, the doubt is not to be solved in favor of the citizen, rather than in favor of the state upon whose legislation the doubt arises, and whether such solution is not most in accord with the general principles applied in other cases. Strict construction is the general rule in the case of statutes which may divest one of his freehold by proceedings not in the ordinary sense judicial, and to which he is only an enforced party. It is thought to be only reasonable to intend that the legislature, in making provision for such proceedings, would take unusual care to make use of terms which would plainly express its meaning, in order that ministerial officers might not be left in doubt in the exercise of unusual powers, and that the citizen might know exactly what were his duties and liabilities. A strict construction in such cases seems reasonable, because presumptively the legislature has given in plain terms all the power it has intended should be exercised. It has been generally supposed that the like strict construction was reasonable in the case of tax-laws.
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> 'Statutes,' says a learned and able writer, 'made for the advancement of trade and commerce,

> and to regulate the conduct of merchants, ought to be perfectly clear and intelligible to persons of their description. By the use of ambiguous clauses in laws of that sort the legislature would be laying a snare for the subject, and a construction which conveys such an imputation ought never to be adopted. Judges, therefore, where clauses are obscure, will lean against forfeitures, leaving it to the legislature to correct the evil, if there be any.'"

In Texas Company v. Amos, State Comptroller, et al, 81 So. 471, 77 Fla. 327, the Florida Supreme Court held that a Florida statute which provided (Sec. 596qqqq Comp. Stat. 1914) that any corporation, company, person or association owning, controlling or operating a tank car or refrigerator on or over any railroad within the state shall, on the 1st day of October, pay into the state $500 as a license fee, should, in view of a preceding section (Sec. 596a Comp. Stat. 1914) which provided "that no person, firm or corporation shall engage in or manage any business, profession or occupation mentioned in the Act unless a state license **** shall have been procured from the Comptroller," be so interpreted that an oil company that merely operated tank cars (when the railroad did not furnish them) as an incident to its business rather than its business, did not fall within the statute. Clearly this decision of the Florida Supreme Court is arrived at by a very strict construction of the statute, and the court recognized this with the following language, which we deem appropos here:

> "While we think the legislative intent clear, if there is doubt it becomes our duty to resolve such doubt in favor of the citizen and against the state.
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> The statute is penal in its nature and the rule is that penal statutes are to be construed strictly and are never to be extended by implication. Kloss v. Commonwealth, 103 Va. 864, 49 S.E. 655."

In Bluff City Railway Co. v. Clark, 49 So. 177, 95 Miss. 689, the Supreme Court of Mississippi in construing a tax on the business of owning and operating a "wharf boat", said:

> "Laws imposing privilege taxes are liberally construed in favor of the citizens and courts will not extend the statute imposing such taxes beyond the clear meaning of the language employed."

In accordance with the above cases and principles there set out, see also the following cases:

Carney v. Hamilton, 42 So. 378, 89 Miss. 747;
Greene v. W.L. Weller & Sons, 195 S.W. 422, 176 Ky. 129;
State v. Staples, 85 Atl. 1064, 110 Me. 264.

Under the principles of the foregoing cases and authorities, it would seem clear that House Bill No. 23 should not be construed as requiring a wholesaler to pay a license fee of $50 on each wholesale establishment that such wholesaler maintains. But, of course, if several establishments or warehouses are maintained under the name of a wholesaler when in truth and in fact several wholesalers are interested in same, and the arrangement is merely a subterfuge in order to avoid the payment of permit fees provided for by House Bill No. 23, then each establishment should be required to pay the permit fee.

Contrary to the above opinion it may be argued that such cases as United States v. Cline, 26 Fed. 515, and United States v. Shriver, 23 Fed. 134, which hold that where a person has secured a license to retail liquor at one town and dispenses liquor at another town, he is guilty of violating the Federal revenue laws prohibiting the sale of liquor without a license. But an examination of the Federal statute under which the above decisions were made discloses that the permit tax in said cases referred to was created under Federal laws respecting special taxes (Title 26, Chapter IV, p. 163 USCA) and within said chapter is Sec. 184 (p. 166, Title 26 USCA), which provides that the payment of the special tax imposed in said chapter shall not exempt the payee from additional special taxes for carrying on his trade or business in other places than the one stated in the collector's register. The section last referred to was first enacted on July 13, 1866 (Sec. 9, 14 Stat. at Large 113), and was in existence at the time of the decision of the above cases; hence, the permits there involved were permits issued to a retailer permitting him to retail intoxicating liquor at a specific place, and no other.

Such cases are not in point with the question here confronting us, for in said section of House Bill No. 23 providing for a wholesaler's permit, there is no limitation made that a permit issued thereunder shall permit the wholesaler to operate only at a certain place within the state and only from one place of business. Furthermore, from the very nature of things, cases involving permits to sell liquor before the Eighteenth Amendment should not be authority for our problems governing the permits to be issued under House Bill No. 23. Those cases involved permit taxes which sought, in a measure, to place restrictions upon the sale of a product due to its health impairing qualities; whereas, House Bill No. 23 deals with a product, which, by express admonition of the Legislature,

is non-intoxicating and conducive to the health and general welfare of the people.

Respectfully submitted,

POWELL B. McHANEY,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General

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